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In the Supreme Court of the United States

OCTOBER TERM, 1958

No.—

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DRIVERS, CHAUFFEURS, HELPERS, LOCAL UNION NO. 639, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on November 26, 1958.

OPINIONS BELOW

The opinion of the court of appeals (Appendix, *infra*, pp. 15–21) is not yet reported. The findings of fact, conclusions of law, and order of the Board (R. 12–60)[1] are reported at 119 NLRB 232.

JURISDICTION

The judgment of the court of appeals (Appendix, *infra*, p. 22) was entered on November 26, 1958.

[1] "R." references are to the Joint Appendix filed in the court of appeals.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether peaceful picketing by a union which does not represent a majority of the employees, to compel immediate recognition as the employees' exclusive bargaining agent, is an unfair labor practice under Section 8(b)(1)(A) of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (61 Stat. 136, as amended, 29 U.S.C. 151, *et seq.*), are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).
>
> * * * * *
>
> SEC. 8(b). It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *
>
> * * * * *

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

STATEMENT

A. THE BOARD'S FINDING OF FACTS

In September 1953, the Union[2] was certified by the National Labor Relations Board as the exclusive bargaining representative of the drivers, helpers, warehousemen and furniture finishers of Curtis Brothers, following its victory in a Board-conducted election (R. 13; 95, 114). The Union and the Company thereafter entered into contract negotiations, and eventually reached agreement on all subjects with the exception of union security (R. 13, 64; 115, 140–141). An impasse was reached on this point, and on February 26, 1954, the Union struck in support of its contract demands (R. 13, 64; 115). Nine of the 21 employees in the bargaining unit joined in the strike (R. 64; 115). Picket lines were established in front of the Company's store and also in front of its warehouse. The warehouse, through which all the employees in the unit entered and left the premises, forms an "L" wing with the store and faces a side street (R. 13, 64–65; 116, 124, 126, 152).

Thereafter, the 9 strikers were replaced, and the

[2] Respondent, Drivers, Chauffeurs and Helpers Local 639, International Brotherhood of Teamsters. The employer, Curtis Brothers, is engaged, in Washington, D.C., in the retail furniture, storage, household moving and rug cleaning businesses (R. 63–64).

Company continued to remain open for business. The picketing continued, however, and was in effect at the time of the hearing before the Board trial examiner, in June and July 1956, nearly two and one-half years later (R. 13, 117, 124–125, 144). At the outset of the strike as many as 15 or 20 pickets patrolled together, but as time went on the number was reduced to about 6, and finally, from about November 1955 on, no more than two pickets appeared, neither of whom was an employee of the Company (R. 65, 67; 116, 117, 125, 181).

On February 1, 1955, about one year after the strike had begun, the Company filed a petition with the Board requesting that a representation election be held to determine whether the employees in the bargaining unit continued to desire the Union to represent them (R. 13; 101, 117–118). The Union opposed the holding of such an election, and mailed to the Board's regional director a letter prepared by Union counsel stating that the Union "herewith abandons all claims to exclusive recognition as the majority bargaining representative" of the employees involved (R. 14; 97, 158–159). On February 17, 1955, the day after the above letter was mailed, the Union for the first time during the strike did not picket the Company's place of business. It resumed the picketing the next day, however, with changed signs (R. 65; 118–119). Prior to February 17, the legend on the picket signs had read: "Curtis Brothers on strike. Unfair to organized labor" (R. 14; 117). Thereafter, two legends were used, which read, respectively: "Curtis Bros. employs nonunion drivers, helpers,

warehousemen and etc. Unfair to Teamsters Union No. 639, AFL," and "Teamsters Union No. 639 AFL wants employees of Curtis Bros. to join them to gain union wages, hours, and working conditions" (R. 14; 99, 100, 119, 166). Following a hearing in the representation case, the Board found, contrary to the Union's contention, that the Union "was still seeking to win immediate recognition by the Company," and therefore directed that an election be conducted (R. 14; 101–105). The election was held in October 1955, with 28 employees voting against the Union and only one employee voting for it (R. 14; 106, 108).

The picketing continued after the election as before, ordinarily consisting of two pickets carrying the signs which were adopted following the letter of disclaimer in February 1955 (R. 67; 125, 144, 160). Shortly after the election, however, the picketing was confined to the sidewalk area starting in front of the store and extending to a driveway exit from the parking lot, which was contiguous to the store. No further picketing was carried on, as it had been theretofore, in front of the warehouse where the single employee entrance is located (R. 67; 124, 126, 149, 152, 154–155). The pickets patrolling in front of the store could be seen from the warehouse entrance only by looking diagonally across the parking lot over a distance of about a city block (R. 126–127, 152). The pickets during this period were present from about 8:30 in the morning until the store's closing at 9 in the evening, although the employees in the unit worked from 8 in the morning until 5 in the after-

noon (R. 67; 133–134). The pickets neither talked with the employees nor distributed literature to them while on patrol (R. 67; 160, 179–80).

B. THE BOARD'S CONCLUSIONS AND ORDER

The Board (with one member dissenting) concluded that, even after it had been rejected by a majority of the employees in a Board-conducted election, the Union continued to picket the Company for the purpose of compelling it to grant the Union immediate recognition as the employees' exclusive representative (R. 15). The Board further concluded that picketing by a minority union for such a recognition objective restrains and coerces the employees involved in the exercise of their right of free choice in the selection of a representative, in violation of Section 8(b)(1)(A) of the Act (R. 17–20, 23–33).

To remedy the foregoing violation, the Board's order requires the Union to cease and desist from restraining or coercing the Company's employees in the exercise of their rights guaranteed in Section 7 of the Act, and to post appropriate notices (R. 33–34).

C. THE DECISION OF THE COURT OF APPEALS

The court of appeals (with one judge dissenting) set aside the Board's order (*infra*, pp. 15–21). The court concluded that "§ 8(b)(1)(A) is inapplicable to peaceful picketing, whether 'organizational' or 'recognitional' in nature," being impelled to this conclusion "by the impact which § 8(b)(1)(A) would have upon other provisions of the Act were any different interpretation adopted" (*infra*, pp. 17–18). Thus, as the Court explained (*infra*, p. 18):

> * * * if 8(b)(1)(A) were made applicable to the practice of striking or picketing itself, rather than to the violent conduct which may accompany those practices, § 13, which prohibits interference with the right to strike except as *specifically* provided for elsewhere in the Act, would effectively be expunged therefrom; § 8(b)(1)(A) does not specifically sanction picketing or striking. * * * Similarly, since § 8(b)(4)(C) expressly makes illegal picketing for recognition if a union has already been certified as bargaining representative, the Board's construction of § 8(b)(1)(A) would make the former section entirely redundant.

REASONS FOR GRANTING THE WRIT

1. The question whether Section 8(b)(1)(A) of the Act interdicts picketing by a minority union to compel recognition as exclusive bargaining agent is of major importance, not only in the administration of the Act, but also in the conduct of labor-management relations generally.[3] Unions frequently utilize this economic weapon to further their goals, and a decision as to its propriety would obviously have a significant bearing on the balance of power in labor disputes affecting commerce. Moreover, since its holding in the instant case that minority picketing for recognition is violative of Section 8(b)(1)(A), the Board has had a substantial number of unfair labor practice cases involving such activity. Thus, in the 16-month period since the Board decison herein, the Board has had occasion, at the final adjudication stage, to apply

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[3] The question presented is solely one of application of the statute. On the facts as found by the Board, the picketing was clearly not protected by the First Amendment. *Teamsters Union v. Vogt, Inc.*, 354 U.S. 284.

it in about 14 cases,[4] and 6 of these are now pending on petition for enforcement or review in various courts of appeals.[5]

In these circumstances a resolution of the question by this Court is clearly appropriate. Indeed, since Section 10(f) of the Act gives any person aggrieved

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[4] *Machinists, Lodge 942 (Alloy Mfg. Co.)*, 119 NLRB 307; *Operating Engineers, Local 12 (Shepherd Machinery Co.)*, 119 NLRB 320; *Teamsters, Local 641 (Ruffalo's Trucking Service)*, 119 NLRB 1268; *Joint Council of Sportswear Workers (Harou and En Tour)*, 120 NLRB No. 90; *Retail Store Employers Union, Local 1595 (J. C. Penney Co.)*, 120 NLRB No. 189; *Paint, Varnish & Lacquer Makers Union (Andrew Brown Co.)*, 120 NLRB No. 89; *Teamsters, Local 420 (Fisk & Mason)*, 120 NLRB No. 19; *Teamsters, Local 196 (Biltmore Mfg. Co.)*, 120 NLRB No. 219; *Teamsters, Local 912 (H. A. Rider & Sons)*, 120 NLRB No. 199; *Machinists, Local 311 (Machinery Overhaul Co.)*, 121 NLRB No. 153; *Teamsters, Local 182 (The Alling & Cory Co.)*, 121 NLRB No. 39; *Department Store Employees, Local 1100 (Lane Bryant)*, 121 NLRB No. 86; *United Rubber, Cork, Linoleum and Plastic Workers (O'Sullivan Rubber Corp.)*, 121 NLRB No. 185; *Local 1922, Electrical Workers (Mid-Island Electrical Sales Corp.)*, 122 NLRB No. 105.

[5] *National Labor Relations Board* v. *Paint, Varnish & Lacquer Makers Union (Andrew Brown Co.)*, No. 16204 (C.A. 9); *National Labor Relations Board* v. *United Rubber, Cork, Linoleum and Plastic Workers (O'Sullivan Rubber Corp.)*, No. 7781 (C.A. 4); *Joint Council of Sportswear Workers (Harou and En Tour)* v. *National Labor Relations Board*, No. 14486 (C.A.D.C.); *Retail Store Employers Union, Local 1595 (J. C. Penney Co.)* v. *National Labor Relations Board*, No. 14557 (C.A.D.C.); *Machinists Lodge No. 311 (Machinery Overhaul Co.)* v. *National Labor Relations Board*, No. 14818 (C.A.D.C.); *National Labor Relations Board* v. *Teamsters, Local 182 (The Alling & Cory Co.)*, No. (C.A. 2). See also *National Labor Relations Board* v. *Machinists, Lodge No. 942 (Alloy Mfg. Co.)*, No. 15814 (C.A. 9), decided February 4, 1959, where the court declined to consider this issue because of the union's failure properly to raise the question before the Board.

by a Board order the option of instituting proceedings in the court below, its decision herein, unless reviewed by this Court, could effectively block the Board from carrying out what it believes to be a proper interpretation of Section 8(b)(1)(A). For, in every case where the Board applies that interpretation, the respondent could bring the case into the court below, which, pursuant to its decision herein, would proceed to set aside the Board's order.[6]

2. The holding of the court below is erroneous. It rests on the twin premises that: (1) since Section 8(b)(1)(A) does not specifically outlaw strikes or picketing, to make it applicable to minority picketing for recognition would be contrary to Section 13, which provides that nothing in the Act, "except as specifically provided for herein," shall interfere with the right to strike; and (2) interdicting such picketing under Section 8(b)(1)(A) would make redundant Section 8(b)(4)(C), which expressly makes recognition picketing illegal if another union has been certified as the employees' representative. Both of these premises are demonstrably incorrect.

It is well settled that strikes or picketing may be found to transgress particular provisions or policies of the Act even though they do not outlaw such activity in express terms. Thus Section 8(b)(2)

[6] As shown in n. 5, *supra*, of the 6 cases now pending in the courts of appeals, 3 are in the court below. The court below, moreover, has recently stated that: "One panel of this court will not attempt to overrule a recent precedent set by another panel, even though one or more of its members may disagree with the ruling." *Insurance Agents' Union* v. *National Labor Relations Board*, 43 LRRM 2003, certiorari granted, No. 557, this Term.

does not expressly prohibit strikes,[7] yet it has consistently been held to encompass strikes to compel an employer to discriminate in violation of that section.[8] Similarly, although Section 7 of the Act affirmatively confers the right to engage in "concerted activities for * * * mutual aid or protection," it is clear that neither this provision nor Section 13 privileges strikes or other concerted activities which are contrary to the basic policies of the Act or of other relevant laws.[9] And, as the court below itself concedes (p. 18, *infra*), Section 8(b)(1)(A) clearly does outlaw violent strikes and picketing,[10] although the section does not mention strikes or picketing as such. In short, the question of whether Section 8(b)(1)(A) proscribes minority picketing for recognition depends not on whether that section expressly refers to such activity, but on whether the language of the provision, viewed in the light of Congress' purposes,

[7] In relevant part, Section 8(b)(2) makes it an unfair labor practice for a labor organization or its agents "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) * * *."

[8] See *United Mine Workers* v. *National Labor Relations Board*, 184 F. 2d 392 (C.A. D.C.), certiorari denied, 340 U.S. 934; *National Labor Relations Board* v. *National Maritime Union*, 175 F. 2d 686, 688–689 (C.A. 2), certiorari denied, 338 U.S. 954; *American Newspaper Publishers Ass'n* v. *National Labor Relations Board*, 193 F. 2d 782, 802–803 (C.A. 7), certiorari denied on this issue, 344 U.S. 812.

[9] See the discussion on this point in *Automobile Workers* v. *Wisconsin Board*, 336 U.S. 245, 258–265. See also, *National Labor Relations Board* v. *Local 1229, Electrical Workers*, 346 U.S. 464.

[10] See *National Labor Relations Board* v. *United Mine Workers*, 195 F. 2d 961 (C.A. 6), certiorari denied, 344 U.S. 920.

may fairly be said to encompass that activity. If, on this analysis, conduct would fall under Section 8(b)(1)(A), there has been sufficient "specific provision" for its prohibition to take it out of the protection of Section 13.

The Board's conclusion that Section 8(b)(1)(A) covers picketing by a minority union to compel recognition is a reasonable one. The objective sought—the grant of exclusive bargaining rights to an organization which does not enjoy the support of a majority of the employees—is plainly in derogation of the employees' Section 7 right to select a representative of their own choosing or none at all. And the means utilized to attain that objective—the imposition of economic pressure against the employer's business—would tend to restrain and coerce the employees involved, for damage to the employer's business in turn foreshadows a loss of employment or a reduction in wage rates for his employees. Accordingly, the Union's conduct here would meet the requirements for a violation of Section 8(b)(1)(A)—*i.e.*, restraint or coercion of employees in the exercise of the rights guaranteed in Section 7—no less than other union efforts to abridge employees' rights through adversely affecting job tenure.[11] This conclusion is confirmed, moreover, by the legislative history of Section 8(b)(1)(A). Although one of the purposes of this pro-

[11] See *Communications Workers* v. *National Labor Relations Board*, 215 F. 2d 835, 837–839 (C.A. 2); *National Labor Relations Board* v. *Philadelphia Iron Works*, 211 F. 2d 937, 944 (C.A. 3); *National Labor Relations Board* v. *Reed*, 206 F. 2d 184, 189 (C.A. 9); *National Labor Relations Board* v. *George D. Auchter Co.*, 209 F. 2d 273, 275–277 (C.A. 5).

vision was to interdict union violence and mass picketing,[12] that was not its only purpose. An equally important objective was to impose, insofar as possible, the same restrictions on unions which Section 8(1) of the Wagner Act imposed on employers against intrusion upon protected employee activity.[13] Since an employer violates the Act if he grants exclusive recognition to a minority union,[14] the legislative purpose of an even-handed application of the "restrain or coerce" phraseology is accomplished by construing Section 8(b)(1)(A) to reach a minority union's imposition of economic pressure to gain such recognition. Indeed, during the legislative debates, the proponents of Section 8(b)(1)(A) cited, as examples of union conduct intended to be proscribed thereby, peaceful picketing which threatened to cause a shutdown of operations and thereby deprive employees of their jobs unless they joined an unwanted union.[15]

Nor is a different conclusion required by the contention that the Board's interpretation of Section 8

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[12] See *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U.S. 656, 668–669.

[13] See Leg. Hist. of the Labor Management Relations Act, 1947 (Gov't Print. Off., 1948), pp. 456, 1018, 1021, 1032, 1199, 1203–1204, 1206–1207.

[14] An employer would violate Section 8(a)(1), which makes it an unfair labor practice for him to restrain his employees in the exercise of their Section 7 rights, and Section 8(a)(2), which makes it unlawful for him to give assistance or support to any labor organization. See *National Labor Relations Board* v. *O'Keefe & Merritt Mfg. Co.*, 178 F. 2d 445 (C.A. 9); cf. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U.S. 261, 267.

[15] See Leg. Hist., pp. 1020, 1029, 1030.

(b)(1)(A) would render redundant Section 8(b)(4)(C), which proscribes recognition strikes or picketing where another union has been certified as the employees' representative. Section 8(b)(4)(C) reaches recognition strikes and picketing even when the union seeking representation rights is a majority union [16]—a not uncommon situation where the certification in favor of another union is of several years' duration. That is, in Section 8(b)(4)(C), Congress sought to protect the integrity of an outstanding certification against economic attacks by a rival union; hence, until revoked under the peaceful procedures of the Act (Section 9(c)), the certification is entitled to presumptive validity for purposes of that section even though the rival union may have, in the meantime, succeeded in winning a majority of the employees away from the certified union.[17] Section 8(b)(1)(A), on the other hand, applies where there is no outstanding certification and where the union seeking recognition does not represent a majority of the employees. Furthermore, the history of Section 8(b)(1)(A) negates any implication that Section 8(b)(4)(C) was intended to be the exclusive provision respecting recognition picketing. Section 8(b)(4)(C) was contained in the Senate Bill as it was

[16] See *Paint Makers Union* (*Andrew Brown Co.*), 120 NLRB No. 89.

[17] See *Meat and Provision Drivers Union, Local 626* (*Lewis Food Co.*), 115 NLRB 890. Cf. *Parks* v. *Atlanta Printing Pressmen*, 243 F. 2d 284 (C.A. 5), certiorari denied, 354 U.S. 937; *Tungsten Mining Corp.* v. *District 50, etc.*, 242 F. 2d 84 (C. A. 4), certiorari denied, 355 U.S. 821.

reported out of committee, while Section 8(b)(1)(A) was not. The latter was added on the floor, because certain members of the Senate Labor Committee, including Senators Taft and Ball, felt that the Committee Bill did not go far enough in its regulation of union activities,[18] and, in the course of the debates, they indicated (n. 15, *supra*) that it was designed to cover, *inter alia*, the situation here. In these circumstances, the adoption of Section 8(b)(1)(A) by the Senate can only be viewed as an enlargement upon the provisions of the bill as reported by the Senate Committee—including Section 8(b)(4)(C). And, since the Senate bill as thus amended was the bill ultimately adopted by both Houses, this conclusion carries over to the law as enacted.

CONCLUSION

For the reasons stated, this petition for certiorari should be granted.

Respectfully submitted.

J. LEE RANKIN,
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Associate General Counsel,
DOMINICK L. MANOLI,
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National Labor Relations Board.

FEBRUARY 1959.

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[18] See Leg. Hist., pp. 113, 456–462.

APPENDIX

In the United States Court of Appeals
For the District of Columbia Circuit

No. 14347

DRIVERS, CHAUFFEURS AND HELPERS LOCAL UNION NO. 639, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE, AND ON REQUEST FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Decided November 26, 1958

Before WILBUR K. MILLER, BAZELON and WASHINGTON, Circuit Judges.

BAZELON, *Circuit Judge:* This appeal presents the question whether peaceful picketing to achieve recognition by members of a union which does not claim to represent a majority of the bargaining unit violates § 8(b)(1)(A) of the National Labor Relations Act, where no majority union has been certified.[1]

[1] 49 Stat. 452 (1935), as amended, 29 U.S.C. § 158(b)(1)(A) (1952). This section provides that:

"(b) It shall be an unfair labor practice for a labor organization or its agent—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 * * *."

In 1953 the National Labor Relations Board certified the petitioner union as exclusive representative for an appropriate unit of employees of Curtis Brothers, Inc., a District of Columbia mover and retail furniture operator. After unsuccessful collective bargaining negotiations, petitioner called a strike and commenced to picket the employer's various establishments. The picketing continued for about two years during which time the employer discharged the striking help and replaced them with non-union employees. As a result of the events of these two years, the union lost decisively a new representative election conducted early in 1955 at the instance of the employer. Petitioner continued to picket the retail store, asserting in its placard, *inter alia,* that Curtis Brothers employed non-union "Drivers, Helpers, Warehousemen, etc." This picketing was conducted by, at most, two union members at any one time, and was admittedly peaceful in all respects. Curtis Brothers filed an unfair labor practice charge with the Board, claiming that the union's conduct violated § 8(b)(1)(A).

Relying mainly on previous Board decisions, the Trial Examiner concluded that the alleged conduct was not a violation as charged. The Board disagreed. It reasoned that the picketing was intended to impose economic injury upon the employer so long as he refused to recognize the union as bargaining agent for its employees, that any loss to the employer might reasonably jeopardize the employees' economic status,

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Section 7, 49 Stat. 452 (1935), as amended, 29 U.S.C. § 157 (1952), provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection * * *."

and that as a result of such threatened effect the employees might be influenced against their will to join the picketing union. The Board found that the picketing therefore restrained and coerced the employees in the exercise of their right to bargain collectively through representatives of their own choosing. It consequently held petitioner's conduct violated § 8(b)(1)(A) and ordered the union to cease and desist. This is the order we review.

The Board interpretation of § 8(b)(1)(A), and of the meaning of "coerce and restrain," presents implications of serious and far reaching consequences. But extended discussion by us would only duplicate the very complete and able expositions of the issues in the Examiner's decision, the Board's opinion, and in the opinions of the concurring and dissenting members.[2]

We adopt the positions expressed by the Trial Examiner and the Board's dissenting member Murdock in holding that § 8(b)(1)(A) is inapplicable to peaceful picketing, whether "organizational" or "recognitional" in nature, subject always to the limitations of § 8(b)(4)(C). Broadly stated, we find this conclusion necessitated by the impact which § 8(b)(1)(A) would have upon other provisions of the Act

[2] Trial Examiner's Intermediate Report and Recommended Order, Case No. 5–CB–190 (1956); Local 639, International Brotherhood of Teamsters, AFL-CIO, 119 N.L.R.B. No. 33, Lab. Rel. Rep. (41 L.R.R.M. 1025) (1957). See also the numerous excellent discussions by legal commentators of the scope of § 8(b)(1)(A) generally, and of the import of the Board's decision in Curtis Brothers more particularly. *E.g.*, Cox, Labor Law. 299–304, 872–76 (3d ed. 1954); Cox, *Some Current Problems in Labor Law: An Appraisal*, 35 L.R.R.M. 48 (1955); Bornstein, *Organizational Picketing in American Law*, 46 Ky. L.J. 25, 57–61 (1957); Note, 42 Minn. L. Rev. 459 (1958); Note, 44 Va. L. Rev. 741 (1958); Note, 67 Yale L.J. 1462 (1958).

were any different interpretation adopted. For example, if § 8(b)(1)(A) were made applicable to the practice of striking or picketing itself, rather than to the violent conduct which may accompany those practices, § 13, which prohibits interference with the right to strike except as *specifically* provided for elsewhere in the Act, would effectively be expunged therefrom;[3] § 8(b)(1)(A) does not specifically sanction picketing or striking. In fact, it is one of the most general provisions of the entire Act. Similarly, since § 8(b)(4)(C) expressly makes illegal picketing for recognition if a union has already been certified as bargaining representative, the Board's construction of § 8(b)(1)(A) would make the former section entirely redundant.[4]

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[3] 49 Stat. 457 (1935), as amended, 29 U.S.C. § 163 (1952), provides:

"Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

See *NLRB* v. *International Rice Milling Co.*, 341 U.S. 665 (1951), for a discussion of § 13.

The use of "strike" in § 13 has been construed to apply to picketing as well. See *Sales Drivers AFL* v. *NLRB*, 97 U.S. App. D.C. 173, 229 F. 2d 514, *cert. denied*, 351 U.S. 972 (1955); *International Brotherhood of Teamsters*, 87 NLRB 502, 507–08 (1949).

[4] 49 Stat. 452 (1935), as amended, 29 U.S.C. § 158(b)(4)(C) (1952):

"(b) It shall be an unfair labor practice for a labor organization or its agents to—

* * * * * *

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where

Legislative history and post-legislative history both confirm this interpretation of § 8(b)(1)(A). Although ambiguities do exist in the legislative history of that provision, the overall impression clearly emerging is that peaceful picketing to secure recognition is not prohibited by the Act.[5] And while conduct and expressions of attitude subsequent to the enactment of legislation are not necessarily determinative of the meaning of that legislation, in this case the legislators principally responsible for § 8(b)(1)(A), and the Board itself, have, for the ten years since its enactment, adhered to the interpretation which this court now adopts.[6] Such universal acceptance of this interpretation presents a convincing confirmation of our views.

The order of the Board is therefore set aside and the case remanded for further proceedings not inconsistent with this opinion.

So ordered.

WILBUR K. MILLER, *Circuit Judge*, dissenting: Although rejected by the Curtis employees by a vote of 28 to one, the union thereafter continued to picket the company. The Board held that, under these circumstances, the picketing constituted a violation of

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an object thereof is: * * * (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title."

[5] Board member Murdock convincingly discusses the legislative history of the Act, see note 2 *supra*. For similar interpretation by the Board itself, see *National Maritime Union*, 78 N.L.R.B. 971 (1948).

[6] See sources cited at note 2, *supra*.

§ 8(b)(1)(A) of the Taft-Hartley Act[1] in that it restrained or coerced employees in the exercise of guaranteed rights, saying *inter alia:*

> * * * There can be no more direct deprivation of the employees' freedom of choice than to impose upon them a collective bargaining agent they have not chosen or have expressly rejected. * * *

There can be no doubt that the purpose of the Teamsters' picketing was either to compel Curtis employees to join the union in order to keep on working, or to put pressure on the employer to grant recognition to the very union its employees had just rejected.[2]

Section 8(b)(1) of the Labor Act makes it an unfair labor practice for a union "to restrain or coerce (A) employees in the exercise of the rights guaranteed" in § 7.[3] The latter section guarantees to employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and * * * to refrain from any or all of such activities * * *."

When these two sections of the statute are read together, it becomes clear that it is immaterial whether the union restrains or coerces the employees directly or throught the medium of the employer. For using the employer as an economic club does not protect the union from a charge of illegal coercion if such coercion in fact results. Thus, both of the only two possible *purposes* of the picketing are illegal. The purposes of

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[1] 61 Stat. 140 (1947), 29 U.S.C. § 158(b)(1)(A).

[2] After the union lost the election, the pickets carried signs reading: "Teamsters Union No. 639 AFL wants employees of Curtis Bros. to join them to gain union wages, hours and working conditions."

[3] 61 Stat. 140 (1947), 29 U.S.C. § 157.

it being unlawful under the plain language of the Act, the picketing itself is, of course, illegal.

In effect, the majority hold it lawful for the Hoffa labor organization, after it had been repudiated almost unanimously by the employees, to put a picket line around the place of business in an effort to force the employer to tell the employees to join the union or be discharged—*i.e.*, in an attempt to force the employees into the union they had just emphatically rejected. Such an interpretation of the Act, which I think is clearly wrong, is an invitation to labor racketeers and hoodlums to use its processes for unlawful purposes.

Filed Nov. 26, 1958
Joseph W. Stewart
Clerk

In the United States Court of Appeals for the District of Columbia Circuit

No. 14347—September Term, 1958

DRIVERS, CHAUFFEURS AND HELPERS LOCAL UNION NO. 639, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE, AND ON REQUEST FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before WILBUR K. MILLER, BAZELON and WASHINGTON, *Circuit Judges*

JUDGMENT

This case came on to be heard on the record from the National Labor Relations Board, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the order of the National Labor Relations Board on review in this case is set aside and that the case is remanded to the National Labor Relations Board for further proceedings not inconsistent with the opinion of this court.

Per Circuit Judge BAZELON.

Dated: November 26, 1958.

Separate dissenting opinion by Circuit Judge WILBUR K. MILLER.

U. S. GOVERNMENT PRINTING OFFICE: 1959